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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,991	01/10/2007	Graham Francois Duirs	JAMES I16.001APC	9007
20995 7590 05/09/2011 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER				
BOSQUES, EDELMIRA				
ART UNIT		PAPER NUMBER		
3767				
NOTIFICATION DATE		DELIVERY MODE		
05/09/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
efiling@kmob.com  
eOAPilot@kmob.com

# Office Action Summary

**Application No.**

10/572,991

**Applicant(s)**

DUIRS, GRAHAM FRANCOIS

**Examiner**

EDELMIIRA BOSQUES

**Art Unit**

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 32, 33, 38, 39 and 41-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33, 38, 39 and 43-48 is/are rejected.
- 7) ☒ Claim(s) 41 and 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-840)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on February 28, 2011 has been entered. Claims 32-33, 38-39, 41-48 remain pending in the application.

### ***Allowable Subject Matter***

Claims 41-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32-33, 38-41 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin (US 2498374).

Regarding claim 32, Martin teaches a method of reducing the chances of infection in an animal's udder treating a teat of the udder following cessation of regular milking or during involution (*the examiner is considering that the method for inserting device 6 in the udder after the cessation of regular milking of the cow, because the teat*

*is infected, and since the device contains medicinal agents it can reduce the chances of further infection) comprising: inserting a device (6) into an orifice of a teat (See Fig.3) of the udder and **into a teat streak canal** following cessation of regular milking or during involution; the **device is held in position within the teat streak canal** (the examiner is considering that the device is held in position within the teat streak canal at the moment where the device is located within the streak canal, just before it is being pushed farther in the teat canal) without any part of the device extending outwards beyond an epithelium of the teat orifice (See Fig. 5, Refer to col. 4, lines 1-24) such that the device provides a barrier to passage of infectious agents and particulate matter into the udder (the device acts as a barrier to prevent unwanted passage of substances through the streak canal).*

Regarding claim 33, Martin teaches delivering one or more treatment substances to the teat streak canal (Refer to col.4 Lines 19-24).

Regarding claim 38, Martin teaches wherein the retaining comprises retaining the device within the teat streak canal for a time (Refer to col. 4, lines 17-19) *which would be sufficient for the device to integrate with endogenous keratin to form a composite plug.*

Regarding claim 39, Martin teaches degrading the device within the teat streak canal over time (Refer to col. 4, lines 18-20).

Regarding claim 48, Martin teaches the device does not extend into a teat cistern (See Fig. 5).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (US 2498374) in view of Gordhamer (US 3821956).

Regarding claims 43-45, Martin fails to specifically disclose the retaining is enhanced by one or more surface features of the device, wherein said one or more surface features include one or more grooves and a spiral thread. Gordhamer teaches a device (Fig. 1) to be inserted in the teat duct, being retained in the duct, the retaining is enhanced by one or more surface features of the device, wherein said one or more surface features include one or more grooves (30, 20) and a spiral thread (13) (Refer to

col. 2, lines 60-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to add grooves or a spiral treads to Martin's device as disclosed by Gordhamer to improve the holding power in the teat and improve the introduction of therapeutical drugs into the milk duct.

Regarding claim 47, modified Martin teaches the inserting of the device occurs with minimal dislodgement of keratin (*as a consequence of the insertion of the device as described in Martin's method, minimal keratin dislodgement occurs*).

Claims 43 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (US 2498374) in view of Child (US 4385633).

Regarding claims 43 and 46 Martin fails to specifically disclose the retaining is enhanced by one or more surface features of the device including a plurality of protrusions. Child teaches a device for insertion into a teat canal, the device having the retaining enhanced by one or more surface features of the device including a plurality of protrusions (37). It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a plurality of protrusions to Martin's device as disclosed by Child to improve the holding power in the teat and improve the introduction of therapeutical drugs into the milk duct.

Regarding claim 47, modified Martin teaches the inserting of the device occurs with minimal dislodgement of keratin (*as a consequence of the insertion of the device as described in Martin's method, minimal keratin dislodgement occurs*).

### ***Response to Arguments***

Applicant's arguments filed February 28, 2011 have been fully considered but they are not persuasive. Regarding claim 1, the applicant argues that Martin fails to teach "following cessation of regular milking or during involution", because teaches that the method is for speed the recovery of an animal to be returned to the production line, and thereby the applicant assumes Martin's method is performed during regular milking season. The examiner disagrees, because there is no teaching in Martin's inventions as to in what season the method is performed, and the claim can also be interpreted as if the milking cessation is due to an infection of the animal's udder also applicants assertions regarding the meaning of involution are not supported by factual evidence.

The applicant further argues that Martin fails to teach the **device is held in position within the teat streak canal**. However the examiner disagrees because, the examiner is considering that the device is held in position within the teat streak canal at the moment where the device is located within the streak canal, just before it is being pushed farther in the teat canal.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EDELMIRA BOSQUES whose telephone number is (571)270-5614. The examiner can normally be reached on Mon-Fri (10:00am-4:00pm) every other Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin C. Sirmons can be reached on (571)-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/EDELMIRA BOSQUES/  
Examiner, Art Unit 3767

/Theodore J Stigell/  
Primary Examiner, Art Unit 3763